

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:) Group Art Unit: 3611
)
CASE) Confirmation No. 9829
)
Serial No.: 10/697,681) Examiner: Davis, C. H.
)
Filed: October 29, 2003)
) <u>RULE 37 CFR § 1.132</u>
Atty. File No.: 4988-1) <u>DECLARATION FOR PATENT</u>
) <u>APPLICATION</u>
For: READERBOARD SYSTEM)

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Patrick Case declares as follows:

1. I am the inventor of the subject matter of the above identified patent application.
2. I am the president of National Readerboard Supply Company ("NRS"). NRS has been in business since 1987, and specializes in providing readerboards, readerboard panels, and accessories.
3. Traditionally, readerboards have been limited to the display of textual messages created using individual letter panels. As a result of the use of individual letter panels, a great deal of time can be required to install a message, and misspelling is a common problem. More recently, word panels, on which complete words are formed, and price point and picture panels to display graphics have been developed. However, because letter, word, and graphic panels have typically been limited to containing a complete letter, word or image, the size and arrangement of readerboard messages have been limited. In particular, displays were limited or constrained by the rows of the readerboard in which the panels were placed.
4. In order to increase the visual interest of readerboards, span-over panels, in which multiple rows of a readerboard are spanned by a single panel, were developed. These allow

larger letters, words or images to be displayed. However, span-over panels can be difficult to install, are relatively expensive to produce, are expensive to replace, are easily blown out of the readerboard by the wind and are prone to breakage. In addition to the inconvenience of needing to reposition blown-out span-over panels and the cost of replacing blown-out panels that shatter on impact with the ground, blown out span-over panels are dangerous to bystanders and nearby property. Accordingly, span-over panels can present a liability risk to users, in addition to being inconvenient to handle and expensive. An example of a span-over graphic panel is shown in Appendix A, Fig. A1.

5. In order to overcome the limitations and drawbacks of span-over panels, while enabling conventional readerboards having a number of rows to display visually interesting textual messages and images, I developed the Marquee Graphics invention that is the subject of the disclosure of the above-referenced patent application. A basic feature of the Marquee Graphics system is the distribution of portions of letters, words or images across multiple readerboard panels. Accordingly, complete displays are pieced together using multiple panels. For example, Marquee Graphics displays typically (but not necessarily) consist of twelve panels that together cover almost all of the readerboard surface. However, unlike with span-over panels, Marquee Graphics panels do cover (*i.e.* do not overlay) the tracks of the readerboard. Instead, each panel has a height that is no greater than the height of one row of the readerboard. This provides numerous advantages, such as individual panels that are sized for easy handling and installation, resistance to blow down, easy storage, resistance to breakage, enables the use of conventionally sized production equipment and fast facilitates fast installation times. In addition, apart from the Marquess Graphics panels, the readerboard and the “letter changer” tools used to install the panels are conventional.

6. As a consequence of the use of multiple panels to create a larger display, portions of the overall display are obscured by intermediate tracks of the readerboard. This can be seen in the example multi-panel Marquee Graphics readerboard displays shown in Appendix B. In particular, in Figs. B1 and B2 the bucket of chicken at the left of the readerboard is crossed by two tracks of the readerboard. Similarly, the hamburger is crossed by two tracks of the

readerboard the flame design on the word "Buffalo" and the green crossed by one track (Fig. B2). Another example is shown in Fig. B4 in which the image of the sandwich is crossed by two tracks of the readerboard, and the word "Snacker" is crossed by one track.

7. After my initial development of the Marquee Graphics system, I experienced some resistance to the concept, because perspective buyers believed that the interruption of the overall message created by the intermediate tracks of the readerboard would result in an unacceptable appearance. Indeed, readerboards had been traditionally used to present lines of lettering. Also, the relatively recent development of span-over panels confines images to span-over panels that overlay the intermediate tracks of the readerboard, and therefore are able to display images that are not obscured by intermediate tracks. Accordingly, potential customers of my Marquee Graphics system were initially skeptical.

8. My research has demonstrated that the division of images onto panels that are placed in different rows of a readerboard can be visually acceptable to the viewing public. Indeed, the Marquee Graphics system enables establishments to present enticing images that can increase sales dramatically. For example, in tests, the use of my system to display large, colorful images to the public has increased sales of the outlets by an average of 12 to 40%. Some stores even reported doubling or tripling their sales. These increases were due to use of my multiple panel Marquee Graphics system, instead of conventional readerboard panels alone.

9. Because of the initial skepticism of the actual users of readerboards, a number of chains have conducted tests using my system. Those tests were found to increase sales dramatically, and as a result, my company's sales of multiple panel Marquee Graphics system have increased each year they have been offered. Moreover, purchases of the Marquee Graphics system are usually in lieu of conventional panels.

10. For example, in 2004, the first full year the system was available, sales of multiple panel Marquee Graphics systems totaled \$169,332. In 2005, sales of Marquee Graphics systems totaled \$245,297, and in 2006, sales of Marquee Graphics systems totaled \$525,564. During these same periods the proportion of Marquee Graphics systems purchased by customers as a

proportion of the total number of panels purchased by customers of National Readerboard has increased dramatically.

11. It is believed that the increase in sales can be attributed to the ability to provide an enticing image, in combination with the economies provided to users is a result of the unique features of the Marquee Graphics system. These economies include a reasonable acquisition cost, because the Marquee Graphics system allows production using conventional equipment and stock sizes. These economies also include relatively fast installation times. My Marquee Graphics invention is also economical because, by being resistant to blow down and breakage, it reduces or eliminates the need to purchase replacement panels. Also, the user does not need to acquire specialized installation or storage facilities to use any Marquee Graphics system. In addition, the Marquee Graphics system can work in conjunction with other advertising media. The Marquee Graphics system therefore provides the ability to display visually interesting displays that presenting graphics that effectively extend across a large portion of the readerboard, while enabling the use of easily handled panels that are economical to acquire and use, and that are resistant to blow down. Accordingly, the commercial success of the Marquee Graphics system is a result of the features claimed with application. In particular, the claimed division of a graphical element among a plurality of panels allows the use of relatively small panels to display relatively large images and provides the advantages that have resulted in the commercial success of the Marquee Graphics system.

12. As a result of the advantages of my system over previous readerboard systems utilizing conventional panels, sales have increased dramatically. Indeed, the Marquee Graphics system has been adopted by KFC, McDonalds, Burger King, Checkers and others. Moreover, as an entirely new system, these sales have been on top of sales of conventional readerboard panels.

13. The Marquee Graphics system that I have invented has also been the subject of copying by competitors.

Example 1:

National Readerboard offered to provide Sonic Restaurants with multiple panel Marquee Graphics displays at a test store so that the system could be evaluated. Following the initial use

of the system, sales at the test store increased dramatically. As a result, Sonic purchased Marquee Graphics displays for thirteen additional stores. Sales at those additional stores also increased dramatically. Testing was then performed at 148 stores, and Sonic began discussing its desire to use the system nationwide. However, instead of purchasing the additional Marquee Graphics panels from National Readerboard, Sonic instead had copies produced by another vendor of readerboard panels. Examples of displays copied from my original multiple panel Marquee Graphics system are shown in Appendix C. These pictures were taken in 2004, after Sonic had used my Marquee Graphics system at the test store.

Example 2:

The Marquee Graphics system has been adopted by KFC, McDonalds, Burger King, Checkers, among others, using Marquee Graphics panels produced by National Readerboard. As a result of such exposure, Wendy's Restaurants became interested in the concept and contacted National Readerboard. However, rather than sourcing Marquee Graphics panels from National Readerboard, Wendy's has had copies produced by another vendor of readerboard panels. An example of copied panels can be seen in Appendix D.

Accordingly, the multiple panel Marquee Graphics system that I invented, and that is described in the above identified application has been the subject of copying by competitors.

14. The multiple panel Marquee Graphics system that I invented, and that is described in the above identified patent application is entirely new to the readerboard/marquee market. The idea as it came to me was this: "if a picture says a thousand words, why can't we put a picture up on the marquee?" So that is what I started trying to do. The multiple panel Marquee Graphics system as it exists today was the result of my efforts to provide a large picture on a conventional readerboard that can be installed in a readerboard suspended above the ground, without requiring special tools, that can be produced economically, and that is resistant to blow down.

15. I have sold, designed and produced readerboard products for over 13.5 years. As such, I am familiar with the state of the art of readerboard systems as they exist today, and as they

existed at the time my original patent application directed to my marquee graphic system was filed, in October, 2002. Moreover, I am sufficiently familiar with the state of the art of readerboard systems, both as of the present date and as of the period at least from about 2002 onward to form a professional opinion as to what those of skill in the art, at various times during this period, would have been able to make and/or use. In particular, prior to my disclosure of the multiple panel Marquee Graphics system described in my patent application, it had been unknown to place images comprised of partial images formed on multiple panels in multiple rows of a readerboard. In addition, those of ordinary skill in the art, until presented with my invention, would be resistant to dividing an image among panels placed in different rows of a readerboard, because the readerboard tracks intermediate to panels in different rows would obscure a portion of the larger image. This resistance has been borne out by the reaction that my Marquee Graphics system has received in the marketplace. In particular, my system has met with initial skepticism, followed by enthusiastic acceptance after the system has been demonstrated. Accordingly, the Marquee Graphics system I described would not have been obvious to one of skill in the art prior to my invention.

16. The multiple panel Marquee Graphics system that I have invented is not obvious over the references that have been cited by the Examiner. For example, in the latest Office Action the Examiner rejected the claims as obvious over U.S. Patent No. 6,216,375 to Griffin in view of U.S. Patent No. 4,035,940 to Mickey et al. However, the portions of these references cited by the Office Action show nothing more than a conventional readerboard. As such, elements of my invention as claimed are not disclosed by these references. For example, neither Griffin nor Mickey disclose a graphical element or character, portions of which are formed on multiple panels where at least a portion of the graphical element or character is obscured by a track of a readerboard. In particular, those references teach the display of complete characters or images, where the complete image or character is contained on a single panel. Although these references do discuss forming words using letters contained on individual panels, it is noted that no portion of the word or words thus formed is obscured by the track of a readerboard. In addition, these references do not teach the formation of graphics other than words across multiple

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panels. Accordingly, as a person having skill in the readerboard art, it is my opinion that the invention I have claimed is not obvious in view of the references cited by the Examiner.

17. I hereby further declare all statements made herein of my own knowledge are true and that all statements on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above referenced application or any patent issuing thereon.

Date: 6/26/07

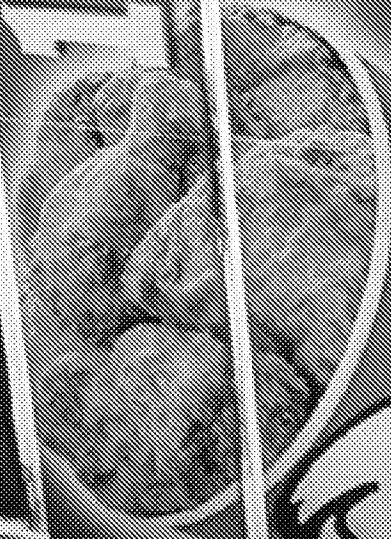
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